

**The Electoral College of the United States of America**  
*A 21<sup>st</sup> Century Evaluation*

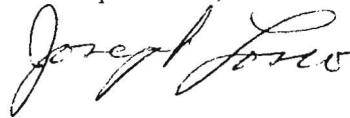
**An Honors Thesis (HONRS 499)**

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A handwritten signature in black ink, appearing to read "Joseph Losco", written in a cursive style.

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## Abstract

The effectiveness of the Electoral College has been debated ever since its inception at the Constitutional Convention in 1787. The majority of participants in this debate hold one of two opinions. Opponents of the Electoral College view the system as inefficient and want it disbanded and replaced. Supporters, however, favor retaining the institution and addressing its imperfections. Dispersed between these two views are millions of Americans with little understanding of the Electoral College and the possible implications of abolishing or reforming the institution. While a comprehensive evaluation of the efficacy of the Electoral College would require a subjective assessment of the institution concerning how it conforms to a political ideology, such a discussion would exceed the scope and desired objective approach of this analysis. Instead, an objective evaluation of the most common arguments in favor and against the Electoral College using a five step formula may be employed: 1) A definition of the Electoral College and how it works; 2) A brief history of the Electoral College; 3) The ideological bases of opponents and proponents of the Electoral College; 4) A discussion of specific arguments for and against the Electoral College; and 5) Conclusions on the debate and its implications. This methodology provides readers with a greater understanding of the significance of the issue and the need to become civically engaged in its continued debate.

### Acknowledgements

I would like to thank Dr. Joseph Losco for advising me through this project. I would not have been able to complete a composition of this quality without his guidance and understanding.

I would like to thank my parents for instilling in me a passion of knowledge and the written word. Without their wisdom and unconditional love, I would not have developed the strength of character and fortitude necessary to achieve this undertaking.

For Thomas E. Horner

I thank God, whom I serve, as my forefathers did, with a clear conscience,  
as night and day I keep you in my prayers.

2 Timothy 1:3



# **The Electoral College of the United States of America**

## ***A 21<sup>st</sup> Century Evaluation***

### **Part I. Introduction**

The people of the United States of America regularly debate many features of their government. Yet, during Presidential elections, one particular issue almost invariably comes to the forefront - the Electoral College. As an institution, the Electoral College serves the American people as the process by which the President is elected. As a concept, however, the institution has been a point of contention. The effectiveness of the Electoral College has been debated since the Constitutional Convention of 1787. As the twenty-first century begins, the discourse is as vigorous as ever.

Participants in the contemporary debate over the effectiveness of the Electoral College may be identified as either opponents or supporters.

Opponents: Most opponents of the Electoral College argue that the institution is undemocratic, overly complicated, dangerously flawed, and outdated.

Supporters: In defense, supporters generally contend that, although the Electoral College has flaws, reform rather than abolition is the appropriate solution. They believe the retention of the institution is necessary to preserve the federal principle of American government.

Many Americans hold opinions on the debate, yet there is evidence that a significant number of these opinions are poorly informed. A Gallup poll conducted in 2004 showed that 61 percent of Americans favored an amendment to abolish the Electoral College, while 35 percent

preferred to keep it (Carlson, 2004). However, a previous Gallup poll in 2000 revealed 28 percent of Americans “didn’t understand the Electoral College system well” while 72 percent said they understood “somewhat well” (Newport, 2001). Further evidence of a poorly informed public is provided by the Intercollegiate Studies Institute, which has been conducting an ongoing survey of American civic education since 2008. Of the 30,000 Americans and subset of 165 elected officials surveyed, only 66 percent and 57 percent (respectively) were able to properly identify the function of the Electoral College (Brake, 2011).

It is troubling that a majority of Americans are willing to make a poorly informed, yet significant, decision regarding the structure of their government. James Madison, one of the primary authors of the Constitution, warned of the dangers of an uninformed citizenry when he wrote, “A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives” (James Madison). It would, therefore, be prudent for the American people to become well informed before making a decision on the future of the Electoral College.

The fundamental knowledge needed to make an informed decision may be obtained by analyzing the logic behind the two sides in the debate over the effectiveness of the Electoral College. With an understanding of these arguments, it will be possible to take into consideration the greatest number of potential benefits and consequences of each option. To begin understanding the arguments for and against the Electoral College, a basic knowledge of its function and history is necessary.

## Part II. How the Electoral College Works

The Electoral College process begins at the level of political party. Each political party must first select its presidential candidate. The Republican and Democratic parties hold national conventions where delegates vote to select a presidential candidate. Before the national convention, the parties hold primary elections at a state level. Whether or not these primaries bind a state's convention delegates to vote for a candidate is based on a combination of state and party rules. Once a candidate has been nominated, a slate of electors is chosen to be put on the ballot. It is largely understood that these electors will vote for their respective party candidate when the Electoral College convenes. On the Tuesday after the first Monday in November-Election Day, the process is taken to the state level (Hardaway 1994, 41-45).

The Electoral College allots each state with as many electors as it has representatives in Congress (with the exception of the District of Columbia, which is given three electors). How these electors are appointed is left to the states and District of Columbia. Most, however, use a winner-take-all method. This method appoints all the state's allotted electors to the party/candidate that wins a statewide popular election.

A presidential candidate must receive a majority, or 270, of the possible 538 electoral votes to win the election. If no single candidate receives a majority of electors, the President is selected by the House of Representatives; and the Vice President by the Senate. In the case of the President, the House of Representatives takes a simple majority vote from the top three candidates with the most electors. This vote is taken by state, with each state delegation placing one vote. In the vote for the Vice President, each Senator places a single vote for one of the two candidates with the most electoral votes (U.S. National Archives and Records Administration).

### Part III. The History of the Electoral College

In addition to the current operation of the Electoral College, knowledge of the institution's past is also important in understanding the debate over its future. Since its creation at the Constitutional Convention in 1787, the Electoral College has undergone several significant changes. Knowledge of these changes will help us understand the arguments with a basis in history.

The history of the Electoral College begins with the ratification of the Articles of Confederation in 1781. The Articles of Confederation united the states through a weak central government for the purpose of securing the freedom, sovereignty, and independence of the confederation. Under this system, the sovereignty of the state was retained and equal to that of the central government. The states did, however, relinquish some sovereignty. The central government created by the articles consisted of a unicameral legislature, called the Congress of the Confederation, which was granted complete power over the military and foreign affairs.

Outside of these two powers, the Articles left the central government essentially powerless. The Congress of the Confederation did not have the authority to levy taxes, and so relied on donations to fund the military- which were never adequate. Furthermore, the Congress of the Confederation had no power to regulate trade or commerce, resulting in complex interstate trade. This also complicated efforts to pay off the debt incurred during the American Revolution, as the Congress of the Confederation could levy neither taxes nor tariffs.

While the aforementioned issues were significant problems for the Congress of the Confederation, two additional concerns may be noted as being especially substantial factors that led to the replacement of the Articles of Confederation.

One of these factors was Shays' Rebellion. In 1786 Daniel Shays, a disgruntled farmer and veteran of the American Revolution, led an armed rebellion in Massachusetts. Due to the lack of funds available to the Congress of the Confederation, the government was unable to respond with sufficient force to end the rebellion, or even protect their own arsenal at Springfield, Massachusetts. The state militia was eventually able to defeat the Shays and his followers in 1787, but confidence in the Articles of Confederation was never restored.

While Shays' Rebellion greatly diminished faith in the Articles of Confederation, the most influential factor in the decision to replace the document may have been written in the document itself. While the problems noted above were significant, the Articles of Confederation did permit the Congress of the Confederation to follow an amendment process to resolve these issues. There was a major flaw in this process, however. Every state was permitted a *liberum veto*, a veto that could prevent a vote of 12-1 from passing the Congress, effectively making it necessary for every piece of legislation passed by the Congress to be unanimous. This necessity for unanimity, combined with the intensity of individual state interests, soon made it clear that any attempt to strengthen the central government for the common interests of all the states would be virtually impossible. Such was the case in a vote to permit the Congress to levy duties on imported goods. This would have allowed the central government to raise funds to pay off debt, but would have reduced the volume of international trade through New England ports. Therefore, when the Congress of the Confederation voted, the little state of Rhode Island was able to defeat the legislation 12-1 by using its veto.

In response to the inadequacies of the Articles of Confederation and the unfeasibility of achieving unanimous agreement upon solutions to these inadequacies, the Congress of the

Confederation endorsed the calling of a convention, “for the sole and express purpose of revising the Articles of Confederation” (U.S. Department of State).

In 1787, delegates from every sovereign state in the Confederation (with the exception of Rhode Island, which refused to attend) met in Philadelphia to discuss possible amendments to the Articles of Confederation. As the debate progressed, however, it became apparent that the Convention would draft an entirely new constitution. The meeting, previously referred to as the Philadelphia Convention, now became the Constitutional Convention (Hardaway 1994, 73-78).

Creating a new form of government was a complex and difficult task. Early into the Convention, a majority of delegates agreed that the central government provided by Articles of Confederation was too weak; but there was no consensus as to how it would be strengthened. A plan was needed that would increase the power of the central government without increasing its threat to the rights of the people and the states.

The delegation from Virginia came to the convention with a proposal to create a significantly more powerful national government. Yet, the Virginians also recognized the hazards of entrusting a single body government with a large amount of power. To offset an increase in power of the national government the plan proposed the addition of national executive and judiciary branches to the legislative branch. The functions, and therefore power, of the government would be divided among these three branches. This separation of powers ensured each branch of the government was able to act independently of, and exercise checks upon, the others. The system of checks and balances between the branches provided internal restraint within the national government and ensured it could not exercise its powers arbitrarily (U.S. Department of State).

The Convention adopted the three-branch model for the new national government as part of a new plan called the Connecticut Compromise. This plan combined the three-branch government proposed by the Virginians with a modification to the legislative branch. The upper house of the bicameral legislature would consist of two representatives from each state, regardless of population, as proposed by a delegate from New Jersey. This partially balanced the distribution of power in the legislature. The lower house consisted of a fixed number of representatives allocated proportionally by state population. With each state represented by two legislators in the upper house, the interests of the smaller states were guaranteed equal representation in one of the houses of the legislature (Hardaway 1994, 78-79).

While the Connecticut Compromise established a structure for the new government, many specific aspects were still undecided. Some of these details had significant potential to affect the balance of power and influence among and between the national, state, and local levels of government. Consequently, these details were subject to extensive debate. The issue of how the Executive should be appointed was one of these contested details, as is exhibited by the 30 votes it took for the Constitutional Convention to come to an agreeable compromise on the matter (Edwards 2004, 78-79).

Understanding how and why the delegates of the Convention decided upon the Electoral College as the method of appointment for the Executive will provide a context for the history of the institution and the historical arguments for and against it. Yet, because the Convention voted to keep the content of the meeting secret, as this would allow delegates to speak free of any external influences, the availability of sources available to explain the reasoning and intent behind the content of the Constitution is limited (Maier 2010, 92). Two of these sources are the notes taken by James Madison during the Convention and the Federalist Papers- a collection of

essays written and published under pseudonyms by members of the Convention to advocate the ratification of the Constitution. As references for examining the intent behind the Constitution, these documents also provide information regarding the creation and purpose of the Electoral College.

The primary sources available reveal the prolonged deliberation on the Electoral College was focused on five main concerns.

### *Legislative Intrigue*

Possibly the most frequently mentioned consideration regarding the appointment of the Executive was the fear of intrigue in during his selection. Before the Electoral College system was fully developed, many delegates believed selection by the national legislature was the best available option. The Convention voted four times in favor of employing the national legislature to select the Executive (Edwards 2004, 79). However, the Convention concluded that the risks of a legislative selection system overshadowed its benefits. The delegates worried that foreign or domestic groups could easily influence standing bodies such as the national or state legislatures. On the possibility of foreign influence, delegate James Madison noted, “the Ministers of foreign powers would have and would make use of, the opportunity to mix their intrigues and influence with the Election” (Benton 1986, 1149). That the members of these bodies would be known well in advance of an election increased concerns they would be susceptible to corruption and intrigue. Madison wrote on this as well, explaining that, “by being standing bodies, they could and would be courted, and intrigued with by the Candidates, by their partisans, and by the Ministers of foreign powers” (Benton 1986, 1150). Additionally, legislatures would already possess a high degree of organization, increasing the potential for cabal. The Electoral College, however, would only assemble briefly for the selection of the Executive, and would therefore



offer little opportunity for intrigue. As Alexander Hamilton explained in Federalist No. 68 the Convention, “had not made the appointment of the President to depend on any preexisting bodies of men, who might be tampered with beforehand to prostitute their vote” (Hamilton et al. 2009, 345).

### *Separation of Powers*

The separation of powers was also an objective of the Convention. So, when considering the method of the Executive's appointment, the Convention decided against any method that might have compromised the independence or integrity of the Executive. If a legislative body elected the Executive, his mandate would be derived from that group. As a result, the Executive might hold favor or obligation toward the faction that elected him. Expressing this concern, James Madison wrote in his notes from the Constitutional Convention, “the candidate would intrigue with the Legislature, would derive his appointment from the predominant faction, and be apt to render his administration subservient to its views.” Delegate Gouverneur Morris concurred with Madison on this matter. He believed, “Of all possible modes of appointment that by the Legislature is the worst. If the Legislature is to appoint, and to impeach or to influence the impeachment, the Executive will be the mere creature of it” (Benton 1986, 1145, 1149).

### *Public Reliability*

Direct election by the public was also a popular option among the Convention delegates. Supporters included delegates: Daniel Carroll, John Dickinson, Gouverneur Morris, and James Wilson. Morris, an outspoken advocate, believed direct election was the logical method of selection, rhetorically asking, “If he [the Executive] is to be the Guardian of the people [why not] let him be appointed by the people?” (Benton 1986, 1134). He and other supporters contended

that, “if the people should elect, they will never fail to prefer some man of distinguished character, or services; some man, if he might so speak, of continental reputation” (Benton 1986, 1126). They also pointed out that “an election by the people at large throughout so great an extent of country could not be influenced, by those little combinations and those momentary lies which often decide popular election within a narrow sphere” (Benton 1986, 1134). Despite these arguments, the direct election alternative, unlike selection by legislature, never received majority support. As a result, the two attempts to change the selection of the Executive to a direct election failed (Edwards 2004, 79).

Concerns regarding direct popular election were varied. Some delegates opposed direct election on a fundamental level. Delegates: Pierce Butler, Elbridge Gerry, Alexander Hamilton, Charles Pinckney, Edmund Randolph, John Rutledge, Roger Sherman, and Hugh Williamson all expressed a shared opinion that the public could not be relied upon to select the most qualified candidate. As Mr. Gerry explained, they believed the people were, “uninformed and would be misled by a few designing men” (Benton 1986, 1137).

Others, such as James Madison and George Mason objected to direct election for practical, rather than ideological, reasons. Early in the Convention, delegate Colonel Mason was noted to have favored the idea of appointment of the Executive by the people, but “thought it impracticable” (Benton 1986, 1102). He later elaborated on this position, as Madison noted, “He conceived it would be as unnatural to refer the choice of the proper character for the Chief Magistrate to the people, as it would, to refer a trial of colours to a blind man. The extent of the Country renders it impossible that the people can have the requisite capacity to judge of the respective pretensions of the Candidates” (Benton 1986, 1128).

Although Madison ultimately backed the Electoral College, he believed direct election was the ideal method of selection. Writing in the third person, Madison said in his Convention notes, “The people at large was in his opinion the fittest in itself. It would be as likely as any that could be devised to produce an Executive Magistrate of distinguished Character. The people generally could only know and vote for some Citizen whose merits had rendered him an object of general attention and esteem” (Benton 1986, 1137). Yet, he took notice of, “two difficulties which he admitted to have weight” (Benton 1986, 1150). Madison understood how polarizing these issues were and believed only a compromise would be practical. Consequently, he wrote, “the substitution of electors . . . seemed on the whole to be liable to the fewest objections” (Benton 1986, 1137).

### *State Interests*

One of the difficulties James Madison cited in his decision to support the Electoral College, rather than his ideal alternative of direct election, was the issue of state interests. Many of the delegates opposing selection by the people feared voter parochialism. Madison explained, “The disposition in the people to prefer a Citizen of their own State, and the disadvantage this would throw on the smaller States” (Benton 1986, 1150). If the citizens of each state tended to vote exclusively for the candidates from their own states, then the candidates from states with the most citizens would likely win every election. However, Madison did not believe this difficulty to be so critical, or irremediable, as to cause abandonment of the consideration of direct election and stated, “Great as this objection might be he did not think it equal to such as lay against every other mode which had been proposed. He thought too that some expedient might be hit upon that would obviate it” (Benton 1986, 1150).

Numerous delegates from the small states did not share Madison's optimistic sentiment, though. They feared that the imbalance in state populations would lead to an imbalance in influence on the election of the Executive. Both Oliver Ellsworth and Roger Sherman of Connecticut voiced concerns about voter parochialism. Sherman insisted the people, "would never be sufficiently informed of the characters, and besides will never give a majority of votes to any one man. They will generally vote for some man in their own State, and the largest State will have the best chance for the appointment" (Benton 1986, 1126). Ellsworth concurrently stated, "The objection drawn from the different sizes of the States, is unanswerable. The Citizens of the largest States would invariably prefer the Candidate within the State; and the largest States would invariably have the man" (Benton 1986, 1150-1151). The delegation from Massachusetts, including the avid opponent Elbridge Gerry, consistently voted against direct election, as did the delegation from New Hampshire (Benton 1986, 1128, 1159).

### *Slavery*

James Madison believed slavery to be one of the most contentious issues of the Convention. He observed that "the great division of interests in the U.S. . . . did not lie between the large & small States; it lay between the Northern & Southern" (Edwards 2004, 87). This division expanded into the debate on the selection of the Executive. The issue swayed southern delegates away from the idea of a direct election because, "the right of suffrage was much more diffusive in the Northern than the Southern States; and the latter could have no influence in the election on the score of the Negroes" (Benton 1986, 1137). Slaves could not vote, and so states with a large number of them would have influence disproportionately small relative to their population.

The example of the state of South Carolina in 1790 may be used to illustrate how a direct election would disadvantage states with a large number of slaves. The 1790 census reported 43 percent of the persons living in South Carolina were slaves (U.S. Census Bureau). It can be estimated, then, that the representation of South Carolina would be reduced by roughly 43 percent in a direct election of the Executive. In contrast, a state with no slaves would have the potential to be represented by 100 percent of its eligible voters.

The possibility of losing influence in the election of the Executive through direct elections concerned some Southern delegates (Edwards 2004, 87). This concern may have influenced the delegations from states with a large proportion of slaves (Maryland, Virginia, North Carolina, South Carolina and Georgia) to vote against direct election on both the occasions it was brought into consideration (Benton 1986, 1128-1129, 1159-1160).

Madison believed a system that used electors, “obviated this difficulty” (Benton 1986, 1137). A system of electors could allocate electors amongst the states in proportion to total population, regardless of the number of eligible voters. Therefore, the Electoral College would allow South Carolina and other states with slaves to retain full influence in the selection of the Executive without extending voting rights.

After discussing these and other concerns, the Convention settled upon the Electoral College as a compromise. By utilizing electors, the system avoided the risks of corruptible standing bodies and public manipulation. It also secured state interests by allotting each state as many electors as it had members in Congress. This ensured representation for the smaller states, as each is guaranteed two senators and at least one representative in Congress. It also made voter turnout, and therefore proportion of state population enslaved, irrelevant—to an extent. The three-fifths compromise counted each slave as  $\frac{3}{5}$  of a person when apportioning

representatives to House of Representatives, so states with slaves lost some influence (Edwards 2004, 44-45). Last, the Electoral College system maintained a separation of powers and both the Federal and national aspects of the central government. The Executive would be independent of both the Judicial and Legislative branches of the national government, as neither were to have a role in ordinary elections. In Federalist No. 39 James Madison described how the Electoral College balanced the aspects of the central government:

The House of Representatives will derive its powers from the people of America; and the people will be represented in the same proportion, and on the same principle, as they are in the legislature of a particular State. So far the government is *national*, not *federal*. The Senate, on the other hand, will derive its powers from the States, as political and coequal societies; and these will be represented on the principle of equality in the Senate, as they now are in the existing Congress. So far the government is *federal*, not *national*. The executive power will be derived from a very compound source. The immediate election of the President is to be made by the States in their political characters. The votes allotted to them are in a compound ratio, which considers them partly as distinct and coequal societies, partly as unequal members of the same society. The eventual election, again, is to be made by that branch of the legislature which consists of the national representatives; but in this particular act they are to be thrown into the form of individual delegations, from so many distinct and coequal bodies politic. From this aspect of the government it appears to be of a mixed character, presenting at least as many *federal* as *national* features [emphases in original] (Hamilton et al. 2009, 196).

By allotting each state an elector for each of its representatives in the House of Representatives, the Electoral College provides the states influence proportionate to their population. This reflects the reality of the states as unequal members of a national union. By allotting the states two electors, one for each Senator, the Electoral College reflects the federal principle that the states are coequal. Therefore, by allotting the states as many electors as they had members in Congress, the Electoral College was an institution that both combined and balanced the federal and national aspects of the central government.

With knowledge of both the function and historical development of the Electoral College, an informed analysis of the contemporary debate concerning the effectiveness of the institution may be performed.

#### Part IV. Problems with Implementation

Not long after the Constitution was ratified did troubles with the Electoral College arise. With the rise of political parties, electors became bound to party candidates. Due to a misunderstanding amongst the electors from the Democratic-Republican Party, the election of 1800 resulted in a tie between Presidential candidate Thomas Jefferson and Vice Presidential candidate Aaron Burr. This was possible since separate elections for President and Vice President were not provided for in the original Electoral College system. Consequently, a run-off election was held in 1801. The House Federalists believed Burr would be more willing to cooperate with the Federalist than Jefferson, and so attempted to elect the Vice Presidential candidate in as President. In response to the now apparent possibility that an intended Vice Presidential candidate might tie, which might lead to unintended outcomes in the following run-off election, the Twelfth Amendment was passed into law in 1804. The Twelfth Amendment split the two votes allotted to each elector. Electors would now vote for one Presidential candidate and one Vice Presidential candidate. In the event no Presidential candidate received a majority, there would be a run-off election in the House between the three candidates with the most votes. In the event no Vice Presidential candidate received a majority, a runoff election between the two Vice Presidential candidates with the most votes would be held (Bennett 2006, 22-23).

The next major controversy involving the Electoral College came in 1876, when an improbable series of events transformed the Presidential election into a crisis. The troubles began

when Republican Presidential Candidate Rutherford B. Hayes and Democratic Presidential candidate Samuel J. Tilden came to a stalemate in electoral votes. Each candidate held 184 electoral votes out of a possible 369. The last available electoral vote was a disputed elector in Oregon. Although Hayes won a clear majority in each of the three elector races, one of the electors was a postmaster. The Democratic Governor LaFayette Grover declared the postmaster was ineligible as the Constitution prohibited a "person holding an office of trust or profit under the United States" from being electors. The postmaster then resigned his position with the postal service and was elected to his elector position by the other two electors according to Oregon statute. However, Governor Grover appointed his own, Democratic, elector to replace the postmaster. Further complicating the election was the controversy surrounding the elections in Florida, Louisiana, and South Carolina. The Federal government still held a strong presence in the former Confederate states and there widespread accusations of corruption and fraud by both Democratic and Republicans. In total, these controversies brought twenty electoral votes into dispute (Bennett 2006, 31-32).

The Twelfth Amendment did not provide any guidance as to how such controversies should be resolved. It only directed that "votes shall be counted in the presence of the Senate and the House of Representatives." In the absence of any current law regarding the situation, it was agreed that an Electoral Commission would be formed to resolve the disputes in the four states. The Commission was composed of fifteen members. The House of Representatives, Senate, and Supreme Court each provided five members. Congress selected four of the Supreme Court Justices—two that favored Republican ideology and two that support Democratic policy. These four Justices then voted for a fifth, impartial Justice. Originally, Justice David Davis was chosen to be the fifth Justice. However, before the Congressional members of the Commission



were finalized, Justice Davis was elected to a vacant Senate seat by the Illinois legislature.

Justice Davis promptly accepted this position (Bennett 2006, 32-33). To replace Justice Davis, the Democrats agreed to the Republican-leaning Justice Joseph P. Bradley, who had demonstrated an ability to vote objectively in past court decisions. With the other Commission members voting along party lines, the vote of Justice Bradley was decisive in every decision. That Justice Bradley voted in favor of Hayes in every dispute led some to question the alleged objectivity of the Justice. Consequently, Hayes won every contested state by a vote of 8-7. As a result, Hayes won all twenty disputed electoral votes and defeated Tilden 185-184 (Hardaway 1994, 134).

To prevent future disputes and crises, the Electoral Count Act (ECA) was passed in 1887. This law clarified the procedures and authorities by which contested electoral votes were to be counted in a number of different scenarios. The ECA gave the states the authority of resolving disputes over Electoral votes. The ECA declared, for a state law concerning the appointment of electors to be binding, it must— be 1) “enacted prior to the day fixed for the appointment of electors,” i.e. before Election Day; 2) provide for “final determination” of the dispute over the appointment of the elector; and 3) required this determination to be made six days before the meeting of the electors in the state (Edwards 2004, 15). This provision provides the states with the power to create or amend its law regarding the resolution of disputed electors no later than six days prior to Election Day. If required, the states then have the six days before the election to resolve any disputes according to the existing state law, and may not change that law. This period of six days is often referred to as the “safe harbor” provision. Congress then takes electors certified under this process into consideration. The House of Representatives and the Senate separately decide whether the state decisions are legal. Except in the case of a concurrent

rejection of the state decision by both houses of Congress, the electors are then counted (Bennett 2006, 37-38).

Since the adoption of the Electoral Count Act, few changes have been made to the Electoral College as institution. The last important modification was made in 1961 through the ratification of the Twenty-third Amendment to the Constitution. The amendment addressed the issue of the representation citizens of the District of Columbia, which was not a state, in the Electoral College. Before the amendment, the Constitution provided electors equal to the number of representatives in Congress, and thus only citizens of the states were represented in the Electoral College. The Twenty-third Amendment changed this by granting the District of Columbia as many electors as the least populous state (currently three), providing its citizens representation (Hardaway 1994, 106).

#### IV. The Debate

Contemporary criticisms and advocacies of the Electoral College vary extensively in ideology and objective. Most often, both opponents and supporters juxtapose the indirect method of election provided by the Electoral College with more direct and democratic alternatives. Therefore, the analysis will focus on arguments and counterarguments made within this specific context. In this context:

Opponents: Most opponents of the Electoral College argue that the institution is undemocratic, overly complicated, dangerously flawed, and outdated.

Supporters: In defense, supporters generally contend that, although the Electoral College has flaws, reform rather than abolition is the appropriate solution. They believe the retention of the institution is necessary to preserve the federal principle of American government.

In analyzing the debate, it will be useful to understand the intended implications of the arguments made against the Electoral College. It would be difficult to evaluate the significance of the arguments effectively without knowing their fundamental purpose. Claims against the Electoral College address two related questions: 1) Is the Electoral College still relevant?; and 2) Is it efficient? Applying one these two questions to each argument will provide guidance in coalescing the substances of individual arguments into a comprehensive evaluation of the Electoral College.

The question of relevancy is the most significant in evaluating the Electoral College. The influence of arguments concerning the performance of the Electoral College will be more appropriately assessed after considering the arguments concerning the relevance of the

institution. For example, in deciding whether to purchase a widget, it is logical to ask, “Do I need a widget?” before asking, “How well does the widget work?” It is more appropriate to determine the need for something before considering its efficiency.

Accordingly, if the Electoral College no longer serves a substantial purpose, there would be little evidence to justify its continuation. In *Why the Electoral College is Bad for America*, George C. Edwards asks, “Can the intentions of the framers justify the violation of majority rule in the twenty-first century?” To this question, he replies,

Most of the motivations behind the creation of the electoral college are simply irrelevant today and can be easily dismissed. Legislative election is not an option, there is little danger the president will be too powerful if elected, voters have extraordinary access to information on the candidates, there is no justification at all for either electors or state legislatures to exercise discretion in selecting the president, defending the interests of slavery is unthinkable, and the short-term pressures have long dissipated (Edwards 2004, 89).

Critics such as Edwards believe that most of the intended purposes of the Electoral College no longer exist, and those that do are largely flawed. Consequently, they do not find it justified to retain a system that requires citizens to vote through an intermediary and does not necessitate the winning candidate to receive more votes than his rivals.

While supporters do not deny some of the conditions that prompted the creation of the Electoral College cease to exist, they assert it has retained several significant functions. In their response to allegations that the system is irrelevant, they reply the Electoral College preserves the federal principle and protects state interests by giving the states a role in presidential elections and providing smaller states with greater influence.

## *The Federal Principle*

As was described by Madison in Federalist No. 39, the central government recognized the states as unequal in the House of Representatives and coequal in the Senate; and that the Electoral College combined these principles in the election of the Executive by allotting electors to each state equal to its number of representatives in Congress. Because a Presidential candidate must gain electors by winning states, the states as political units have influence in election of the President and, subsequently the presidency itself. This influence also extends into the Judiciary, as the President nominates federal Justices (Best 1996, 14). Supporters also acknowledge that the system reinforces the role of the state in the central government by allowing, “all matters concerning the elections, from holding primary contests to selecting electors, rest with the states” (Sabato 2008, 139). Proponents fear that abolishing the Electoral College would upset the balance of powers provided by the federal principle and that a decreased role of the states would lead to a dangerous expansion of national government. In *The Choice of the People?* Judith A. Best explains, “The Federal principle is the fulcrum, the fixed support, for the whole national government and for the Constitution. It is the base on which all branches of government turn. Applying the principle to the presidency establishes balance in the arrangement of the three branches” (Best 1996, 14).

Opponents tend to be critical of the federal principle concept. They are unconvinced that changing the Presidential method of election to a direct vote would alter the structure of the federal government. In *Why the Electoral College is Bad for America* George C. Edwards III argues that the Electoral College was not created to be a federative institution. Had this been the intent, he believes it would have been designed with the electors separated into two bodies, as in Congress. In Congress, the states are represented equally in the Senate and unequally in the

House of Representatives. Because the Senate provides each state with equal power, it reflects the collective will of the states. In contrast, the states are represented unequally in the House of Representatives, where representatives are distributed proportionally among the states based on population. Therefore, the House reflects the interest of the nation as a whole. The legislative procedure of Congress provides both the Senate and House of Representatives a veto over one another. This translates into a federal balance of state and national interests. Instead of using this design, the Electoral College places all the electors into a single body and provides the smaller states disproportionately greater representation. Edwards believes this demonstrates the intent was to offset the representation of the larger states and not to create a federal institution by providing the states with a veto over popular representation. Therefore, he concludes that the Electoral College was not created based on the federal principle, and that “representation in Congress and the constitutionally guaranteed rights of states are the core protections of federalism, not the system of electing the president.” (Edwards 2004, 115-116).

Robert W. Bennett observes, “The rhetoric of federalism leads to flights of fancy that tend more to obscure than to illuminate what is at stake.” He considers the fears that the federal character of the national government would collapse with the Electoral College to be exaggerated. Past significant changes to the structure of the government had not caused a collapse. As an example, he mentions how the federal system adapted to the Seventeenth Amendment, which replaced the appointment of federal Senators by state legislature with direct elections. He also explains that, for such fears to be legitimate, it must first be established that the Electoral College actually contributes to the federal system. Because proponents claim the Electoral College supports the federal system by protecting state interests through its use of

electors, Bennett concludes that “beneath all the rhetoric, what this vaunted ‘federalism’ really seems to amount to is simply state-by-state designation of electors” (Bennett 2006, 58-59).

### *Interests*

Proponents also claim that the Electoral College secures the interests of small states and minorities, thereby obliging Presidential candidates to broaden their appeal. They explain that, because state electors are distributed by a winner-takes-all system, candidates must win states. To obtain a majority of electors, candidates are obliged to appeal to as many states as possible. Supporters argue this motivates candidates to campaign in smaller states that might be otherwise ignored in a direct election. Advocate Judith Best explains that “if a candidate is projected to win [a state] with 60 to 65 percent of the vote, he doesn’t want to spend more of his resources in time, promises, and money trying to increase his percentage there. It would be overkill. He would be better advised to spend his resources elsewhere in states that are considered too close to call, even if those states have only three to four electoral votes” (Best 1996, 23).

Furthermore, proponents claim another advantage of the states being the primary electoral unit, combined with the winner-takes-all policy, is that it increases the influence of minority groups. By dividing the country into the districts, the Electoral College gives local interests and minorities a greater opportunity to influence the distribution of their state electoral votes. Robert Hardaway explains this advantage with a statement by Vernon Jordan (president of the National Urban League) at the 1979 Congressional hearing on Electoral College, “Take away the Electoral College and the importance of being black melts away. Blacks, instead of being crucial to victory in major states, simply become 10% of the total electorate, with reduced impact” (Hardaway 1994, 23). Judith Best praises this aspect, as it provides the minority the

opportunity to be a part of the majority (Best 1996, 24). However, Hardaway notes that whether or not a particular group or states hold an advantage over the others is beside the point. Instead, the significance of empowering the small states and minority is that it produces candidates that more accurately represent the interests of the entire country, rather than the majority exclusively (Hardaway 1994, 23). Best also argues that this advantage works in the inverse as well. While dividing the country into districts increases the influence of minorities, it also decreases the influence of majority groups. A powerful national lobby would be able to take full advantage of its numbers in a direct election, but it is unable to do so when its supporters are dispersed throughout the states. This is especially true for regional groups, as they are only able to determine the distribution of the electoral votes of the states in which they have sufficient influence to do so (Best 1996, 24). Hardaway dismisses claims that unequal representation is contrary to the federal principle by noting that the Senate also provides the small states with unequal influence. He argues the allotment of two representatives to each state regardless of population is an even greater inequality of representation, suggesting inconsistency in criticisms of unequal representation (Hardaway 1994, 10).

Conversely, proponents believe direct elections would allow candidates to focus their campaigns on the most populous regions and demographic groups. Under these conditions, it would be possible for candidates to win an election while disregarding the legitimate local interests of the less populous states (Best 1996, 24). Larry J. Sabato concurs with this concern, observing that a national popular vote would not translate into a national campaign (Sabato 2008, 139). Judith Best concludes that a President selected by solely the majority is undesirable and observes, "Therefore, the bottom line on simple majority rule is that when it is oppressive fewer people will be oppressed. Clearly a complex governing system that forces majorities to seek the



consent of the minority, that doesn't place all the power directly and immediately in the hands of a majority coalition, is safer and will come closer to the common good" (Best 1996, 5).

Opponents respond to claim that the Electoral College protects interests with mixed thoughts. George Edwards dismisses the idea of state interests and finds the evidence that small states and minorities benefit from the Electoral College dubious. On the existence of state interests, he argues there is no such thing. Instead, he notes that great diversity can be found within even the smallest state. Furthermore, he cites the lack of any example of a state interest as an indication of their nonexistence.

Concerning the interests of small state in particular, he is unable to identify a meaningful common interest. Geographically, the small states are spread throughout the country. They are located in diverse locations such as New England (Rhode Island), the Southwest (New Mexico), and the Great Plains (Nebraska), Alaska, and Hawaii. Small states also vary greatly in terms of average levels of income, education, political tendencies, population distribution, and economic interests. Because of the numerous differences between the small states, Edwards is unsurprised that they have not formed a voting bloc in Congress or vote for the same Presidential candidates. After considering this evidence, and lack thereof, Edwards concludes that states do not possess coherent interests, nor do the small states share any. Consequently, he believes there is no need to protect state interests, or provide the small states additional representation (Edwards 93-95).

George Edwards also criticizes claims that the Electoral College gives additional influence to minorities. He begins by analyzing the effect on African Americans. In this analysis, he finds three reasons blacks are not advantaged by the Electoral College. First, African Americans are concentrated in the Deep South, where they compose from 20 to 37 percent of the population, and not the large states. In the large states, the largest concentration of blacks is

located in the New York, where they compose 18 percent of the population. Second, the large states may not be competitive. Sometimes the outcome of elections in large states is clear. As low-concentration minority is these states, African Americans would have little influence. Third, a majority of African Americans consistently vote for Democrats. Thus, most politicians do not consider them “swing voters,” or voters who are willing to shift their political loyalties. Because of these three factors, Edwards does not believe the Electoral College advantages African Americans. Instead, he claims it disadvantages them. Their regional concentration does not permit them to influence the outcome of elections in large states, and the winner-takes-all system prevents them from realizing their potential influence as a national bloc (Edwards 2004, 97-99).

Edwards acknowledges that it is possible for groups to benefit from disproportionate representation under certain circumstances. Hispanics have been able to gain influence for two reasons. First, they currently compose 13 percent of the national population, and this percentage is rapidly increasing. Second, they are not loyal to any political party. For these reasons, Hispanics are gaining influence as politicians compete for their votes.

However, Edwards is critical of the Electoral College’s ability to allow special interests to influence elections disproportionately. He recognizes that “the electoral college provides the potential for *any* [emphasis in original] cohesive special interest concentrated in a large, competitive state to exercise disproportionate power.” In addition to advantaging minorities, he adds that special interests such as Wall Street investors in New York, citrus farmers in Florida, and autoworkers in Michigan may also swing their states. He concludes, “Disproportionate power to any group is difficult to reconcile with political equality” (Edwards 2004, 100).

To support his assertions, Edwards includes several empirical analyses. Edwards conducted the first study himself. He began by sorting the speeches delivered by George W.

Bush and Al Gore from June 1 to October 7, 2000 by issue and focus. While sorting, he classified speeches with a national focus, but containing issues that would be of interest to the state they were delivered in, as focused on state interests. The results showed that, out of fifty-one speeches given by Al Gore, two were focused on state concerns—one pertaining to small and large states each. Of the forty speeches delivered by George W. Bush, none concerned the interests of small states and seven were relevant to large states. The Annenberg School conducted a similar study for the Communications and Annenberg Public Policy Center of the University of Pennsylvania. It compiled the transcripts of 102 speeches delivered by Bill Clinton and 71 given by Robert Dole from September 1 to Election Day in 1996. Analysis of the speeches found that only two of Clinton's and none of Dole's speeches focused on an issue of primarily local interest. Edwards interprets these studies as evidence that the Electoral College fails to encourage Presidential candidates to devote more attention to not just small states, but most states (Edwards 2004, 101-103).

Instead of dispersing candidate attention among the states, Edwards contends that the Electoral College motivates candidates to concentrate their efforts on winning competitive states. To support this assertion, Edwards presents several sets of statistics on the frequency of candidate visitation to the states. During the 2000 campaign, seventeen of the twenty-eight smallest states received no visits from the presidential candidates. In contrast, combined visits to the competitive states of New Mexico and Iowa totaled more than all visits to the smallest twenty-eight states combined. Some large states considered noncompetitive also received fewer visits, with combined visits to Iowa and New Mexico were greater than combined visits to New York, Texas, and Ohio. Various studies show there has been a trend of focusing on competitive states with evidence it has occurred in the elections of 1996, 1992, 1988, 1976, and in 1960. As

an example, in the 1960 campaign, Richard Nixon and John Kennedy spent 74 percent of their campaign time in the twenty-four most competitive states. Edwards concludes that candidates “go where the electoral college makes them go, and it makes them go to competitive states, especially large competitive states. They ignore most small states; in fact, they ignore most of the country” (Edwards 2004, 103-107).

Robert Bennett concurs with George Edwards on most points, but also adds some unique ideas. While Bennett shares criticism of a state-based electoral system, he does not focus his argument on the existence of state interests. Instead, Bennett argues, “the electoral college introduces a state-centered element in the presidential election, thus arguably compromising the national focus of the presidency” (Bennett 2006, 60). This contradicts the claim by proponents that a state-centered system encourages candidates to have a greater national perspective. However, he acknowledges the less populous states would likely experience greater neglect under a nationwide vote than the Electoral College. He finds this an acceptable tradeoff, though, as he claims, “precious few of the concerns of their citizens are likely associated with the magnitude of their populations.” By losing the disproportionate representation of the concerns of citizens in the least populous states, he believes, “a nationwide vote would likely cause candidates to focus attention on more states and on a larger swatch of the population than does the electoral college. And a nationwide vote would encourage candidates to campaign in populous state even when their opponents remained decidedly more popular in those states” (62-63).

Robert Bennett also concurs with George Edwards on the issue of minority representation. He notes that minority influence is only increased in competitive states and observes that “this suggests that any benefit for minorities from the electoral college is basically

happenstance, a fragile basis at best for retaining the college as an important feature of American politics” (Bennett 2006, 61). Yet, he acknowledges a nationwide vote would not be able to increase the influence of all minority groups either. Instead, a nationwide vote would, “make the concentration of minorities relatively unimportant. What would matter more is how large the minority is in nationwide terms” (62).

In addition to criticisms regarding the purpose of the Electoral College, there are many disputes about the effectiveness of the institution. While these disputes are also significant in evaluating the relevance of the Electoral College, they are questions of effectiveness rather than purpose. They hypothetically compare the performance of the Electoral College directly to that of a theoretical nationwide vote.

#### *Victory without Plurality of the National Vote*

Perhaps the most pervasive criticism of the Electoral College is that it does not require Presidential candidates to win a plurality of the national popular vote. It is possible for a candidate to win a majority of electoral votes and not win the popular vote. Due to the winner-takes-all method (used by every state except Maine and Nebraska) to allocate their electors, Presidential candidates do not receive any electors from states they do not win. A candidate might narrowly lose elections in the large population states and win in low population states, thereby receiving more nationally cast votes but fewer electoral votes than his opponent won.

	Popular Vote		Electoral College	
	Candidate 1	Candidate 2	Candidate 1	Candidate 2
State 1	900	<b>1,000</b>	0	<b>20</b>
State 2	900	<b>1,000</b>	0	<b>20</b>
State 3	900	<b>1,000</b>	0	<b>20</b>
State 4	<b>700</b>	400	<b>10</b>	0
State 5	<b>700</b>	400	<b>10</b>	0
State 6	<b>700</b>	400	<b>10</b>	0
State 7	<b>700</b>	400	<b>10</b>	0
Total	<b>5,500</b>	4,600	40	<b>60</b>

*Candidate 1 wins the popular vote. Candidate 2 wins the electoral vote.*

Because it disregards the popular will, critics view the Electoral College as a constraint on democracy in America. Therefore, in addition to arguing the Electoral College is no longer relevant, they argue a direct election would be a more democratic and efficient method of choosing the President.

In response to this criticism, proponents of the Electoral College note that direct elections have significant complications as well. One of these concerns the margin of victory. Although the Electoral College allows a candidate to win without a majority of the popular vote, the system will usually provide the victor with an undisputable margin of electoral votes. This averts disputed elections when the victorious candidate wins with less, or a close margin, of the

popular vote, by magnifying the margin of victory with the electoral votes. Proponents believe this was the case in the election of 1960, between John F. Kennedy and Richard Nixon. One set of results claimed Kennedy won the popular vote with a margin of 122,000 of 69 million votes. However, difficulties in tallying votes in the states of Hawaii and Alabama occurred. In Alabama, an alternate tally using a method developed by the Congressional Quarterly returned Nixon as the victor by 58,181 votes. Using this tally, Nixon would have been the winner of Alabama and the popular vote. However, Nixon decided against disputing the results, averting an election crisis. Advocates of the Electoral College believe Nixon's decision was likely influenced by how the Electoral College disambiguates the winner of the election. The results provided by the Electoral College gave Kennedy an electoral majority large enough that the results of Alabama would not affect the outcome of the election. In contrast, close direct elections may often be subject to dispute (Hardaway 1994, 25).

Another notable contingency arises from the direct election plan proposed by American Bar Association and regarded by many opponents as an ideal alternative to the Electoral College. This plan requires a candidate to receive at least 40 percent plurality of the popular vote to win. Should no candidate receive at least 40 percent of the vote, a runoff election is held between the two candidates with the most votes. Proponents find this particularly significant because a direct election could actually result in a lower frequency of Presidents winning with a majority of the popular vote (Hardaway 1994, 17). In contrast, the Electoral College system has awarded the Presidency to the candidate with the most popular votes in fifty-two of fifty-six elections, or ninety-three percent of the time (Edwards 2004, 45). Supporters of the Electoral College question the ability of a direct election system to produce better results.

Opponents reply that the size of a President's majority does not affect his mandate (Edwards 2005, 135). Some even claim that a magnification of the President's margin of victory under the Electoral College increases the possibility of an exaggerated mandate (Bennett 2006, 65). Supporters, then, find that the main contention opponents have with the Electoral College is not that it allows candidates to win without majority support.

Instead, they believe the main issues are voter inequality and bias. As an example, George Edwards states the Electoral College, "violates political equality, favoring some citizens over other depending solely on the state in which they live" (Edwards 2004, 150). In response to this claim, proponents may note the results of an empirical study of the Electoral College by Andrew Gelman, Jonathan N. Katz, and Gary King. Using a statistical analysis of recent electoral data, the study found, "no systematic effect," of partisan bias and that "it is possible for the Electoral College system to lead to different outcomes than the popular vote, but only when the nationwide vote is *very* [emphasis in original] close" (Gelman et al. 2004, 87). Regarding individual voter influence, the study concluded, "the voting power of individual citizens would not likely increase under a popular vote system of electing the president" (77). They explain that these results "are more tentative because in making our analysis we assumed that neither voters nor candidates would have behaved differently under a popular vote system. This is a suspect assumption, but less so than the random voting model that underlies the critique" (87).

### *Third Parties*

Defenders of the Electoral College also argue that a direct election would breakdown the current two-party system and radicalize politics. The Electoral College allocates electors on a winner-takes-all basis, and so a vote for a losing candidate is not ultimately counted. Thus, to



maximize the probability their vote will be relevant; voters are encouraged to vote for the most popular candidate who most closely reflects their views. Therefore, voting for a third party candidate is often considered a “wasted” vote. Consequently, a two party system has dominated American presidential politics since 1836. In this system, the two major parties compete by attempting to have the broadest appeal. Candidates work to achieve this by moderating views and building coalitions (Sabato 2008, 138).

Proponents believe direct elections would fragment the two-party system and reduce the appeal of moderate candidates. Electoral College advocate Judith Best claims second-chance psychology would promote fragmentation. She explains that moderation advantages candidates under the Electoral College because it allows them to become the most popular second best candidate. This happens because voters know they have only one chance to vote, and do not want to waste this voting for a candidate who is unlikely to win—even if that candidate is their favorite. Instead, voters choose to support their favorite (or least disliked) of the two most popular candidates (Best 1996, 57).

With direct elections, however, there is a much greater chance of runoff elections. Judith Best believes this will encourage voters to, “blow off steam by voting for a third-party candidate, or by voting for a single-issue candidate.” She explains voters would do this to, “send a message to the two major parties by casting a protest vote for one of the other jerks [candidates], and . . . [be] reasonably assured of having a chance to vote again in the runoff,” in which the voters, “can still vote for the lesser jerk [undesirable candidate].” This would cause third parties to grow and emphasize differences rather than cohesion (Best 1996, 58).

George Edwards doubts abolishing the Electoral College would result in a breakdown of the two-party system. He argues there are actually four explanations for the two-party system.

Each theory focuses on a different aspect of politics: 1) the method of election and districting; 2) social diversity and divisions; 3) duality of societal interests; 4) the political maturity of the society and its development of a political culture; and 5) social consensus theory. Edwards notes that the Electoral College only pertains to the first of these theories, the structure of the electoral system. However, he does not believe this indicates the Electoral College is the basis for the two-party system. That Americans use the direct election for the selection of almost every other elected official without party fragmentation suggests to Edwards the two-party system must be ascribed to other explanations (Edwards 2004, 13-137).

Instead, Edwards describes the two-party system as a product of several other factors. He indicates the structural basis for the two-party system is the extensive experience Americans have had with direct elections as, and not the Electoral College. He also credits the political maturity of Americans citizens and their political culture, stating, “The American political culture, with its pragmatism, consensus, and relative lack of reinforcing cleavages, provides the additional underpinnings for a two-party system.” In addition, Edwards argues there are other features of the American political system that discourage third parties. He cites V.O. Key, who suggests, “The Presidency, unlike a multiparty cabinet, cannot be parceled out among miniscule parties. The circumstances stimulate coalition within the electorate before the election rather than in parliament after the vote. Since no more than two parties can for long compete effectively for the Presidency, two contending groups tend to develop, each built on its constituent units in each of the 50 states.” Federal and state laws restricting access to elections and campaign funding also act as impediments to third parties. According to Leon Epstein, such laws have, “institutionalized electoral duopoly” (Edwards 2004, 137-138).

In contrast to George Edwards, Robert Bennett displays more uncertainty about the effects a direct election would have on the two-party system. Bennett acknowledges that a Federal and state election laws would impede the rise of third parties. He also believes the decentralization of the popular vote from the states into a single, national district would reduce the ability to create regional third parties. Additionally, this would eliminate the existence of noncompetitive states, strengthen the two-party system in areas where there was previously little incentive to campaign. Yet, Bennett also recognizes there is a possibility that direct elections with runoffs could also encourage third parties (Bennett 2006, 68-71). This will be discussed in the following section.

### *Third Party Influence and Runoff Elections*

There is also a great deal of concern among advocates about the effects third parties and runoff elections would have on the outcome of Presidential elections. Supporters of the Electoral College provide evidence of how runoff elections, combined with a growth of third parties, could result in unintended consequences.

Larry Sabato provides the example of the 1991 Louisiana gubernatorial election. In 1975, Louisiana established an electoral system that provided for runoff elections if no candidate received a majority of votes. This happened in 1991. In the runoff election, voters had a choice between Ku Klux Klan David Duke and crooked former governor Edwin Edwards. Voters chose Edwin Edwards, who later went to jail for corruption (Sabato 2008, 142).

Judith Best notes that without runoff elections, the true majority candidate may not win. She uses the election of 1912 as an example. Woodrow Wilson won the election with 41.8 percent of the popular vote due to a split between William Howard Taft and Theodore Roosevelt.

Had there been a runoff election, it is possible the Republicans would have united against Wilson. Best believes that, once the second-chance psychology takes effect and parties fragment in the initial election, runoff elections will become the rule, not the exception. Taking advantage of the second-chance psychology and spotting a chance to influence the runoff candidates, third parties will grow. Under the Electoral College, however, voters and candidates must build their coalitions in order to win the first, and only election. This prevents the rise of third parties and their influences (Best 1996, 55-57).

Robert Hardaway expands upon the observations of Judith Best with a statement from a Twentieth Century Fund Task Force:

Direct election does not guarantee that the candidate with the most support wins if there are more than two candidates . . . since direct election measures only first choice preferences, it cannot directly reflect intensities of preference or distaste and therefore cannot assure that the candidate with the most votes is the most preferred. The run-off between the top two candidates is designed to deal with possibility that a candidate with a mere plurality will not be able to win unless he prevails over opponents who have an opportunity to unite against him. However [under conditions of multiple candidacies], there is no way to guarantee his election (Hardaway 1994, 17).

Hardaway follows with an historic example of the scenario in the Twentieth Century Fund Task Force statement. In the Russian election conducted on December 14, 1993, thirteen political parties received a significant number of votes. The "liberal Democratic" party received twenty-three percent of the vote, the most out of all the parties. Led by Vladimir Zhirinovsky, the liberal Democratic Party held fascist and anti-Semitic undertones. Its platform included blaming the Jews for starting past wars, and advocated the military annexation of Finland, Poland, and Alaska. Zhirinovsky was later expelled from Bulgaria in January 1994 for supporting a former Waffen SS officer to be installed as dictator of Bulgaria (Hardaway 1994, 18).

The moderate reformist People's Choice party received the next-highest percentage of the vote, with thirteen percent. Following with a close eleven percent was the Communist party. The remaining fifty-three percent of the vote was split amongst other, more moderate, parties. Had two percent of the vote swung to the Communists from the People's Choice party, the top two parties by vote would have consisted of communists and fascists. Hardaway notes that, "had this been a presidential, rather than legislative election, and if Russia had adopted the ABA's proposal for a direct election (with a runoff between the two top vote-getters), the Russian people would have had a choice between a Fascist and a Communist, despite the fact that a vast majority of Russians opposed both Fascism and Communism" (Hardaway 1994, 18-19).

Hardaway criticizes those who believe the United States is immune to such fragmentation. He argues that, after the abolition of the Electoral College and the implementation of direct election, "the lure of getting a piece of the national popular tally would be too great for a multitude of minor and extreme parties to resist. The incentive to compromise, to give and take, to come to terms with major parties would soon vanish" (Hardaway 1994, 19).

Hardaway presents historical evidence that direct elections with runoffs would encourage third parties in the United States. In July 1977, a former member of the National Executive Committee of the Socialist Party testified before hearings on the Electoral College conducted by Senator Birch Bayh. Speaking of his former associate and Socialist leader Norman Thomas, he testified:

One thing we all had in common was an absolute detestation of the Electoral College. It was one of the chief barriers to the success of minor parties . . . We knew that we didn't have a snowball's chance in the nether regions to . . . win any states. Whereas, under the system you propose [direct popular election], we would have made hay while the sun shined during the late autumn. We always started with 5 or 6 or 7 percent who said they were for Norman Thomas. And I'm quoting Thomas: About the third week in October, it would be down to 2 percent; on the first day in November it would be down to 1 percent;

and on the first Tuesday after the first Monday in November, it would be down to 150,000 votes. Period. The reason was that there was no chance for victory in any state. Your 40 percent provision, with the contingency election runoff, was precisely what we prayed for. Unfortunately, the manna from heaven came too late for my use in the socialist days (Hardaway 1994, 19).

Senator Bayh inquisitively responded that, “It’s interesting for me to see how you make a parallel of going from 5 to 1 percent and going from 5 to 20 percent or more which you have to do if everything else was mathematically equal in order to cause a run-off.” To this, the witness promptly replied.

I can handle that one, sir, I believe. You see the Socialists could go to 5 percent, but there’s no reason under your proposed system, as I understand it, why 20 percent has to be garnered by one party. I believe that the 20 percent would be garnered by 15 or 20 parties. I can name 4 or 5 of them: Wallacites, Henry and George; McCarthyites, Eugene and Joseph; Socialists, Trotskyites, Communists, black militants, yellow militants, green militants, purple militants . . . (Hardaway 1994, 19).

After interruption, the witness continued:

It’s not hard to create the French Chamber of Deputies in a multiparty system. We’ve seen it happen everywhere. It can be done by fiddling with the constitutional structure that undergirds and constrains and channels the two-party system . . . Every minority party would have no reason for the chastening constraint of the need to win in the first election. There would be a kind of victory for everybody. And then they’d stay in business, to get the federal financing again in the next election. We would simply create a multiparty system (Hardaway 1994, 20).

Hardaway attributes the failure and short duration of third party candidates such as Ross Perot in 1992 and party splits in 1860 add 1912 to the constraints imposed by the Electoral College, as noted in the testimony to the Senator Bayh’s committee (Hardaway 1994, 20).

George Edwards believes Electoral College supports forget to make a major distinction when discussing third parties. Regarding concerns that direct elections could lead to third parties splitting the majority and causing runoff elections, he claims this would be the result of political polarization and not the cause (Edwards 2004, 142).

Edward also discounts the claim that third parties would be able to exert a great amount of influence over major parties in runoff elections. A candidate cannot bargain voters without the voters' consent. To retain credibility, a third party candidate would need to endorse the major party candidate with the ideals closest to his own. Thus, the bargaining power of third party candidates would be vastly reduced (Edwards 2004, 126).

Furthermore, Edwards argues the Electoral College actually encourages third parties, and direct elections discourage them. With the state unit under the Electoral College, third party candidates need only to gain support in regions of the country to win enough electoral votes to deadlock an election- as with Henry Wallace in 1968, or Strom Thurmond in 1948. In contrast, direct elections would require a third party candidate, or candidates, to receive at least twenty percent of the national popular vote. Additionally, it is less difficult for a third party candidate to bargain with electors than it would be with voters. Many electors are not required by law to vote for their candidates, and a third party candidate could offer these to a major party candidate in return for concessions (Edwards 2004, 139).

Robert Bennett concurs with Edwards on the belief that the national campaigns of direct elections would weaken third parties. He demonstrates with the election of 1948 the contrast of how the state focus of the Electoral College and national focus of direct elections affect the ability of third parties to gain influence. In the election, candidates Henry Wallace and Strom Thurmond received almost the same number of popular votes. However, Thurmond conducted a regional campaign while Wallace conducted a national campaign. Consequently, Thurmond won thirty-nine electoral votes and Wallace won none (Bennett 2006, 64).

Conversely, Bennett also recognizes the potential for a direct election to increase the chance of a runoff election, and increase the influence of third parties. He begins by defining

“rational” voting, or when voters vote for a major party candidate instead of their preferred third party candidate because they do not want to “waste” their vote. He then acknowledges that this “rational” voting may continue under a direct election system, if there continues to be two strong candidates from which to choose. However, if the initial election becomes fragmented among several equally matched candidates, a voter will need to vote based on preference. This could result in no candidate receiving the requisite forty percent—and therefore a runoff election. It is also possible that voters will discover it could be advantageous to induce runoff elections. Voters could vote for third party candidates based on preference and cause no candidate to obtain the needed 40 percent. These third party candidates could then bargain with major candidates in return for the third party candidate’s endorsement in the runoff. Thus, voters may attempt to use third parties as an indirect method of influencing the policy of major party candidates. Last, Bennett notes that some theorists regard voting itself as irrational because the probability of an individual’s vote influencing the outcome of an election is low. This would imply that individuals who vote are irrational, and therefore many voters may not vote rationally in direct elections and vote based on preference in the initial elections. Consequently, third party candidates might receive a greater number of votes than “rational” voter theorists predict, due to the “irrational” nature of voters, resulting in common runoff elections (Bennett 2006, 69-71).

### *Fraud*

Another complication defenders of the Electoral College foresee in direct elections is difficulty concerning voter fraud. Judith Best claims the Electoral College provides, “quarantine on fraud and recounts.” The Electoral College does not allow votes to cross state lines, and so any accusation of voter fraud, or request for a recount, is constrained to the state level. With



direct elections, fraud claims and recounts will always be on a national level. Best predicts that, “a recount of every ballot box in the country could be necessary” (Best 1996, 58).

Robert Bennett considers the difficulties of addressing voter fraud in a nationwide election, but believes certain factors would mitigate them. First, he believes that advances in procedures for vote casting and counting would be developed. Second, it is likely that by making the entire country into a single voting district would reduce the perceived benefit of committing voter fraud. It would require a massive act of fraud to affect a national election. However, under the Electoral College, altering the results of a smaller district, a state, will have a larger impact by altering the allocation of electoral votes. Therefore, incentive to commit fraud may be greater under the Electoral College (Bennett 2006, 65-66).

#### *Voter Turnout*

Critics of the Electoral College claim that many voters, especially those in non-competitive states, perceive their vote has a low probability of affecting the outcome of the election. As a result, the Electoral College reduces voter turnout (Dahl 2003, 83). Conversely, in direct elections, voters would be aware that every vote counts and would have greater motivation to vote (Edwards 2004, 120).

Proponents reply that, despite the use of direct elections for U.S. Senators, U.S. Representatives, and other positions, there is no evidence that a direct election would increase voter turnout (Kimberling). Additionally, the Electoral College ensures that states receive representation in the election of the President. It is possible for that a regional catastrophe, inclement local weather, or other uncontrollable variables to cause depressed voter turnout rates in a state. The Electoral College would neutralize any resulting voter turnout disparities between

the states. Direct elections fail to provide a similar insurance of voter representation (Drachman and Langran 2008, 146).

### *Agreement*

While defenders and opponents take opposite positions on many issues concerning the effectiveness of the Electoral College, both sides agree to acknowledge some of these issues as legitimate concerns. However, proponents do not view these as irreparable, and so take what Larry Sabato calls the “mend it, don’t end it” approach to these problems. Two of the most prominent and recognized are faithless electors and a contingent election in the House of Representatives.

### *Faithless Electors*

Constitutional law does not require electors to vote for the candidate they are associated with on ballots. Originally, electors were chosen by state legislature and expected to vote by their own discretion (Hardaway 1994, 98). Since the 1830s, electors have been appointed by popular selection, gradually become associated with candidates (Bennett 2006, 42). Although the Supreme Court has ruled that electors may vote for whom they please once they have been appointed, political parties may demand an elector to pledge a vote for a candidate beforehand. Some states have created laws to punish electors who break these pledges, but this punishment does not change the elector’s vote. The occurrence of faithless electors is a rare, but troubling problem. Of the 17,397 votes cast by electors between the years 1820 and 1980, only seven have failed to honor their pledge (Hardaway 1994, 50).

### *House Contingent Election*

If no candidate receives a majority of electoral votes, or in the event of an electoral tie, contingent elections are held. The House of Representatives elects the President and the Senate elects the Vice President. Both the Constitution and Twelfth Amendment provide little guidance on the procedures to be employed during these contingent elections. This lack of directive leaves increases the possibility of a controversial or disputed election by leaving a number of potential complications unaddressed. Potential problems include a President of a different party than the Vice President and a President who lost the popular vote.

Ratified in 1804, the Twelfth Amendment significantly decreases the chance of electing a President and Vice President of different parties. By requiring electors to cast distinct votes for each of the positions, it encourages political parties to run their Presidential and Vice Presidential candidates on joint tickets. However, the House of Representatives and Senate may have diverging political alignments. In the event of a contingent election, the Senate and House might elect a President and Vice President (respectively) from different, possibly rival, political parties. A politically divided Executive could result in discontinuity within the government. Policies incongruous to those of the President could be implemented if the Vice President succeeded the President or cast a tie-breaking vote in the Senate (Bennett 2006, 72).

A contingent election of the President in the House of Representatives also increases the possibility that the President will not have won the popular vote. While the voters of smaller states receive slightly disproportionate influence in the initial election under the Electoral College, the contingent election in the House provides them even greater influence. Because each state votes by delegation, every state has equal influence in electing the President. This completely disregards the population disparities between the states. The single vote of the

Representative of Wyoming (representing approximately half a million people) would have the same influence as the combined votes of all fifty-five representatives from California (representing over 35 million people). Furthermore, the citizens of the District of Columbia would be unrepresented. Although the Twenty-third Amendment provides the District of Columbia with three electors in the Electoral College, the district is not provided representatives in Congress. Therefore, the citizens of the District of Columbia would not have representation in a Presidential election that results in a contingent election. Because of these two issues, the probability that the President would not win the popular vote increases in a contingent election (Edwards 2004, 73-76).

However, the greatest concern is that a state may completely lose its influence in the election. Because the Representatives of the House vote for the President by state, if a state delegation vote results in a tie, that state would not place a vote for any candidate.

Consequently, every citizen of that state would be unrepresented in the election of their President (Hardaway 1994, 167). It would be possible for the deadlocked of only three state delegations (California, Florida, and Texas) to result in the disenfranchisement of over a quarter of the nation's population in the election of the President (Sabato 2008, 141).

## Part V. Conclusions

A balanced analysis of the debate regarding the effectiveness of the Electoral College reveals the complexity of the issue. Both proponents and opponents present significant evidence to support their positions. After reviewing these arguments objectively, a more informed evaluation of the Electoral College is now achievable. While this evaluation is left to the individual, three conclusions concerning the debate itself may be drawn from this analysis. First, despite the many issues of contention between supporters and opponents of the Electoral College, both sides agree the current institution has inadequacies. Among these faults are faithless electors and contingent elections in the House of Representatives. Second, participants on both sides of the debate agree the fate of the Electoral College will have significant consequences for the American political system. The following are just a few of the implications mentioned by the two sides. Opponents believe retaining the Electoral College will continue to violate voter equality and lead to crisis due to its complexity. Supporters believe abolishing the Electoral College would upset the balance and principle of Federalism in government, and lead to a fragmentation of political parties. Third, the issue is likely to return to the forefront of American political discourse in the future. According to one count, over 700 bills have been introduced in the House of Representatives and none has passed (Dahl 2003, 87). As of April 21, 2011, one bill regarding the Electoral College has been proposed. House Joint Resolution 36, currently in committee, would abolish the Electoral College in favor of direct election. Furthermore, several states have taken it upon themselves to annul the Electoral College without a Constitutional amendment. As of April 21, 2011, seven states have adopted the National Popular Vote Interstate Compact. By signing this bill into law, the states agree to award their allotted electors to the winner of the national popular vote. The seven states that have joined the

compact possess a combined total of seventy-four electors, or 24 percent of the 270 electoral votes required to win the Presidency (National Popular Vote, Inc.). Once enough states have enacted the compact to satisfy the needed 270 electoral votes, the Presidential election will effectively become a nationwide popular vote. However, in addition to the aforementioned criticisms of a direct election, concerns specific to the National Popular Vote Interstate Compact have been raised. Some believe the compact would violate the Voting Rights Act and therefore be illegal. Depending on how the Supreme Court interprets the Voting Rights Act, the loss of voter influence for certain minorities by effectively nullifying electoral districts could be considered illegal (Gringer 2008, 182-223). Others argue the compact would sufficiently affect the structure of the federal government to require the plan's approval by Congress under the Compact Clause of the Constitution (Muller 2007, 372-393). Past Supreme Court decisions have implied that the Compact Clause applies to compacts that "have an 'impact on our federal structure'" (Bennett 2006, 171). From this, it is clear that both the Electoral College and its alternatives should be carefully considered before making a decision on the future of the Presidential electoral process.

## Appendix A.

### Article. II. Section. 1.

The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:--  
"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

(U.S. Archives)



Appendix B.

AMENDMENT XII

*Passed by Congress December 9, 1803. Ratified June 15, 1804.*

Note: A portion of Article II, section 1 of the Constitution was superseded by the 12th amendment.

The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; -- the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; -- The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. [And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in case of the death or other constitutional disability of the President. --]\* The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

*\*Superseded by section 3 of the 20th amendment.*

(U.S. Archives)

## References

- Bennett, Robert W. 2006. *Taming the Electoral College*. Stanford, California: Stanford University Press.
- Benton, Wilbourn E., ed. 1986. *Vol. 2 of 1787: Drafting the U.S. Constitution*. College Station: Texas A&M University Press.
- Best, Judith A. 1996. *The Choice of the People? Debating the Electoral College*. Lanham, Maryland: Rowman & Littlefield Publishers, Inc.
- Brake, Richard. 2011. Opinion: Elected Officials Flunk Constitution Quiz. *AOL News*, January 14, Opinion section.  
<http://www.aolnews.com/2011/01/14/opinion-who-are-the-constitutional-illiterates/>  
(accessed March 18, 2011).
- Carlson, Darren K. Public Flunks Electoral College System. Gallup.  
<http://www.gallup.com/poll/13918/public-flunks-electoral-college-system.aspx>  
(accessed March 17, 2011).
- Drachman, Edward, Robert Langran. 2008. *You Decide! Controversial Cases in American Politics*. United States of America: Rowman & Littlefield Publishers, Inc.
- Edwards, George C., III. 2004. *Why the Electoral College is Bad for America*. New Haven: Yale University Press.
- Gelman, Andrew, Jonathan N. Katz, and Gary King. 2004. Empirically Evaluating the Electoral College. In *Rethinking the Vote: The Politics and Prospect of American Election Reform*. Oxford, New York: Oxford University Press.
- Gringer, David. 2008. Why the National Popular Vote Plan is the Wrong Way to Abolish the Electoral College. *Columbia Law Review* 108, no. 1 (January),  
<http://www.columbialawreview.org/assets/pdfs/108/1/Gringer.pdf>  
(accessed March 2, 2011).
- Hamilton, Alexander, James Madison, John Jay. 2009. *The Federalist Papers*. Ed. Ian Shapiro. New Haven: Yale University Press.
- Hardaway, Robert M. 1994. *The Electoral College and the Constitution: The Case for Preserving Federalism*. United States of America: Praeger Publishers.
- Kimberling, William C. 1992. *The Electoral College. Federal Electoral Commission*.  
<http://www.fec.gov/pdf/eleccoll.pdf> (accessed April 19, 2011).
- Madison, James. James Madison to W.T. Barry, August 4, 1822. The Library of Congress.  
[http://memory.loc.gov/cgi-bin/query/r?ammem/mjmtxt:@field\(DOCID+@lit\(jm090034\)\)](http://memory.loc.gov/cgi-bin/query/r?ammem/mjmtxt:@field(DOCID+@lit(jm090034)))  
(accessed March 26, 2011).
- Maier, Pauline. 2010. *Ratification: The People Debate the Constitution*. New York: Simon & Schuster.
- Muller, Derek T. 2007. The Compact Clause and the National Popular Vote Interstate Compact. *Election Law Journal* 6, no. 4 (November 4),  
<http://www.liebertonline.com/doi/abs/10.1089/elj.2007.6403> (accessed March 2, 2011).

- National Popular Vote, Inc. 27% of the Way to Activating the National Popular Vote Bill.  
<http://www.nationalpopularvote.com/pages/misc/status.php> (accessed April 20, 2011).
- Newport, Frank. 2001. Americans Support Proposal to Eliminate Electoral College System.  
*Gallup News Service*, January 5.  
<http://www.gallup.com/poll/2140/Americans-Support-Proposal-Eliminate-Electoral-College-System.aspx> (accessed March 17, 2011).
- Sabato, Larry J. 2008. *A More Perfect Constitution*. New York: Walker Publishing, Inc.
- U.S. Archives. The Charters of Freedom.  
[http://www.archives.gov/exhibits/charters/constitution\\_amendments\\_11-27.html#12](http://www.archives.gov/exhibits/charters/constitution_amendments_11-27.html#12)  
(accessed April 17, 2011).
- U.S. Census Bureau. Census of Population and Housing: 1790.  
<http://www2.census.gov/prod2/decennial/documents/1790a.zip>  
(accessed April 12, 2010).
- U.S. Department of State. The Articles of Confederation.  
<http://www.america.gov/st/usg-english/2008/January/20071116174253xjsnommis0.2778284.html>  
(accessed March 26, 2011)
- U.S. Department of State. The Constitutional Convention of 1787.  
<http://www.america.gov/st/educenglish/2008/April/20080422132926eaifas0.4029047.html>  
(accessed March 29, 2011)
- U.S. National Archives and Records Administration. A Procedural Guide to the Electoral College. U.S. Electoral College.  
[http://www.archives.gov/federal-register/electoral-college/procedural\\_guide.html](http://www.archives.gov/federal-register/electoral-college/procedural_guide.html)  
(accessed March 20, 2011).